



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

**Citation:** *M. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 9

**Date:** January 12, 2016

**File number:** AD-15-1331

**APPEAL DIVISION**

**Between:**

**M. L.**

**Applicant**

and

**Canada Employment Insurance Commission**

**Respondent**

**Decision by:** Pierre Lafontaine, Member, Appeal Division

## **REASONS AND DECISION**

### **DECISION**

[1] The Tribunal grants leave to appeal before the Appeal Division of the Social Security Tribunal.

### **INTRODUCTION**

[2] On November 18, 2015, the Tribunal's General Division found that:

- The Tribunal does not have the authority to cancel the Applicant's debt as a result of her disentitlement, despite the fact that the Respondent had paid her benefits erroneously.

[3] On December 8, 2015, the Applicant filed an application for leave to appeal to the Appeal Division.

### **ISSUE**

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

### **THE LAW**

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted” and the Appeal Division “must either grant or refuse leave to appeal”.

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* states that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

## ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove her case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact, or jurisdiction to which the response might justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In her application for leave to appeal, the Applicant essentially argues that the General Division did not rule on her request to cancel the overpayment and that it therefore refused to exercise its jurisdiction.

[13] She states that the General Division dismissed her appeal with a write-off recommendation, which the Respondent did not follow. She also states that her file contains miscalculations with regard to the amount owing.

[14] Upon review of the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raised a question of law, fact or jurisdiction, the response to which may justify setting aside the decision under review.

### **CONCLUSION**

[15] The Tribunal grants leave to appeal before the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division